

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Mark III Media, Inc.)	CSR-8902-S
KGWC-TV, Casper, Wyoming)	MB Docket No. 15-45
)	
Petition for Recognition of)	
Significantly Viewed Status)	

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 2015**Released: June 25, 2015**

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mark III Media, Inc. (“Mark III”), licensee of KGWC-TV, Casper, Wyoming, filed the above-captioned petition seeking a ruling that KGWC-TV is significantly viewed in the Wyoming communities of Rock Springs and Gillette.¹ It seeks this status to qualify for the significantly viewed exception to the network non-duplication and syndicated exclusivity rules.² As discussed below, the data submitted by Mark III demonstrate that KGWC-TV is significantly viewed in these communities. For the reasons discussed below, we grant Mark III’s Petition.

II. BACKGROUND

2. In 1972, in Appendix B to the *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, the Commission established a list of significantly viewed stations based on surveys for the periods May 1970, November 1970, and February/March 1971.³ Section 76.54(d) of the Commission’s rules allows television broadcast stations not encompassed by the surveys (*i.e.*, not on-the-air at the time the surveys were taken) to demonstrate “significantly viewed status on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods” during the first three years of the station’s operation which are comparable to the surveys used in compiling Appendix B.⁴ Alternatively, stations may seek to establish significantly viewed status on an individual community or system-wide basis, pursuant to Section 76.54(b) of the rules.⁵ Section 76.54(b) states that significantly viewed status:

¹ Petition at 1.

² *Id.* at 1-2. See also 47 C.F.R. §§ 76.92(f), 76.106(a), 76.122(j), and 76.123(k).

³ See 36 FCC 2d 326, 347 ¶ 55, n.14 & Appendix B (1972).

⁴ 47 C.F.R. § 76.54(d). See also *Diversified Commc’ns. (WCJB(TV))*, 15 FCC Rcd 4764, 4765 ¶ 3 (2000). In instances where a station has undertaken a technical upgrade and wishes to be added to the list, it may file a petition for waiver requesting that it be considered “new” as of the date of its upgrade in order that it may use county-wide data rather than community-specific data for significantly viewed purposes. See 15 FCC Rcd at 4765 ¶ 3; see also *KSTC TV, LLC*, 25 FCC Rcd. 8123, 8124 n.4 (MB 2010).

⁵ 47 C.F.R. § 76.54(b).

may be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population.⁶

KGWC-TV is a CBS affiliate.⁷ Accordingly, to be considered significantly viewed under Section 76.5(i) of our rules, KGWC-TV's reported audience must exceed the required viewing level of a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation share of at least 25 percent.⁸

III. DISCUSSION

A. Mark III's Submission

3. Mark III submitted the results of an audience survey conducted by Eastlan Ratings, LLC ("Eastlan").⁹ For non-cable, non-alternative delivery households within those communities, Eastlan conducted two one-week telephone surveys.¹⁰ The first week was September 7-13, 2014; the second week was November 30-December 6, 2014. Eastlan used a telephone survey technique that consisted of randomly-selected telephone numbers, including listed, unlisted, wireline and wireless numbers, within the communities, which were identified by their zip codes assigned by the U.S. Postal Service.¹¹ The combined two-week average audience data show:

⁶*Id.*

⁷ KGWC-TV is assigned to the Casper-Riverton DMA. Rock Springs is located in Sweetwater County, part of the Salt Lake City, Utah DMA and Gillette is in Campbell County, which is part of the Denver, Colorado DMA.

⁸ 47 C.F.R. § 76.5(i).

⁹ See Petition at 3-4 and Attachment at 1.

¹⁰ Mark III states that due to an oversight, Eastlan did not send the notice required by 47 C.F.R. § 76.54(c) prior to conducting its survey. Mark III notes that the Commission's stated purpose of the notice is to provide an opportunity to a "petitioner to correct any errors or clarify issues related to the methodology before the data are purchased and the petition is actually filed and, perhaps, avoid the filing of oppositions." See *Saga Broadcasting, LLC*, 28 FCC Rcd 16685, ¶ 4, n.14 (2013). Mark III asks the Commission to waive the notice requirement in this case to the extent necessary to process the Petition since the Commission itself will be soliciting comment on the Petition and Mark III has already purchased the studies. Additionally, Mark III states that the same parties that were to have received notice in this case will be served with a copy of the Petition, so no party will be prejudiced. Mark III represents that in the event that any party raises concerns with respect to Eastlan's methodology, Mark III will address it in its response. The only alternative, according to Mark III, would be to reinstate the costly survey process, which Mark III argues would not be in the public interest. In view of the fact that interested parties were served with a copy of the Petition, as represented by Mark III, and no oppositions were filed in this matter, we will grant Mark III's waiver request.

¹¹ Petition at 3-4 and n.2; Attachment at 1

KGWC-TV Combined Two-Week Average Audience¹²

Community	House-holds Studied	Total Viewing Hours Share	Standard Error	Share-S.E.	NWC Share	Standard Error	NWC-S.E.
Rock Springs	22	32.1	3.02	29.08	90	5.01	84.88
Gillette	20	20.7	4.12	16.58	60	8.22	51.78

4. Based on these data, Mark III concludes that the average audience results from two week-long surveys, conducted by an independent audience survey firm in accordance with the Commission's rules, demonstrate that KGWC-TV achieved average share and cume (i.e., net weekly circulation share) figures above the Commission's requirements for network affiliated stations. Thus, Mark III requests that the Commission recognize KGWC-TV as significantly viewed in the surveyed communities.¹³

B. Analysis

5. The survey submitted by Mark III satisfies the requirements of Section 76.54(b) of the Commission's rules that the survey be conducted by an independent audience survey firm.¹⁴ The two weeks covered also meet the requirement that they be separated by more than 30 days, and in this case neither week is between April and September. The sample selection (i.e., identifying the communities by zip code and eliminating cable and ADS households) and survey methodology (i.e., randomly-selected sample using telephone surveys) are sound statistical techniques and are consistent with surveys found acceptable in the past for this purpose.

6. To be sure that the reported audience statistics exceed the criteria in the rules, the standard error must be subtracted from the reported estimate. In each case shown in the table above, the reported share minus the standard error exceeds the 3 share of total viewing hours requirement. Similarly, for each community, when the standard error for the net weekly circulation share is subtracted from the reported net weekly circulation share, the result is greater than the 25 net weekly circulation share requirement. Thus, based on the average audience shares for the two weeks combined, Mark III has demonstrated that KGWC-TV is significantly viewed in each community.

IV. CONCLUSION

7. In view of the foregoing, the petition filed by Mark III Media, Inc. to declare KGWC-TV significantly viewed in Rock Springs and Gillette, Wyoming, **IS GRANTED**.

¹² See Attachment at Exhibits B & D.

¹³ Petition at 4.

¹⁴ 47 C.F.R. § 76.54(b).

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ 47 C.F.R. § 0.283.